STATE OF NORTH CAROLINA

## BEFORE THE DISCIPLINARY HEARING COMMISSION

WAKE COUNTY

OF THE
NORTH CAROLINA STATES

09 DHC 28

THE NORTH CAROLINA STATE BAR,

Plaintiff

COMPLAINT

v.

JOHN M. HOLMES, JR., Attorney,

Defendant

Plaintiff, complaining of Defendant, alleges and says:

- 1. Plaintiff, the North Carolina State Bar ("Plaintiff" or "State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the rules and regulations of the North Carolina State Bar promulgated thereunder.
- 2. Defendant, John M. Holmes, Jr. ("Defendant" or "Holmes"), was admitted to the North Carolina State Bar on August 26, 2004, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

Upon information and belief plaintiff alleges:

3. During all or a portion of the relevant periods referred to herein, Defendant was actively engaged in the private practice of law in the city of Sanford, Lee County, North Carolina.

## FIRST CLAIM FOR RELIEF

- 4. Paragraphs 1-3 are re-alleged and fully incorporated as if set forth herein.
- 5. In March 2008, Defendant purchased the law practice of J. Leech, PLLC, which operated under the trade name "Traffic Ticket Restitution of North Carolina" ("TTRNC"), from attorney Jennifer Leech.
- 6. After purchasing TTRNC, Defendant's law firm, the Holmes Law Firm, PLLC, began operating under the trade name "TTRNC."
- 7. There were only two members of the Holmes Law Firm at the time it operated as TTRNC, one of which was Defendant.

- 8. Defendant entered into contracts with various attorneys across the State (hereinafter "contract attorneys").
- 9. Under the terms of the contract, the contract attorneys agreed to resolve traffic citations of Defendant's clients in exchange for a specified portion of the legal fees paid by the clients to Defendant.
- 10. Defendant advertised the law firm's services to potential clients by mailing solicitation letters ("the solicitation letter") to members of the public who received traffic citations.
- 11. The solicitation letter stated, "Our firm has local member attorneys who work and live in the Counties and districts where we handle tickets."
- 12. The classification of the contract attorneys as "member attorneys" was false and misleading to the public.
- 13. The solicitation letter invited potential clients to visit a website located at http://www.ttrnc.com ("the website"). The website was operated by Defendant.
- 14. Through the website, potential clients could retain TTRNC, communicate specific information about their traffic ticket to Defendant, and submit payment online to Defendant for the representation as well as for court costs and/or fines.
- 15. Upon receiving payment from a client, Defendant instructed a contract attorney to resolve his client's traffic matter. The contract attorney assigned by Defendant to a particular client received a portion of the fee paid to Defendant by that client, while Defendant retained a larger portion of the fee.
- 16. Defendant did not obtain his clients' written consent or inform his clients of the fee-splitting agreement between Defendant and the individual contract attorney prior to the clients' retaining the law firm to resolve their respective traffic matters.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

- a) By describing the contract attorneys as "member attorneys" when in fact they were not member attorneys, Defendant made a false and misleading communication in violation of Rule 7.1(a) and falsely stated or implied that the contract attorneys were a part of a partnership or other professional organization in violation of Rule 7.5(e); and
- b) By failing to obtain his clients' consent before splitting collected fees with attorneys who were not in the same firm, Defendant improperly divided legal fees paid by his clients in violation of Rule 1.5(e).

## SECOND CLAIM FOR RELIEF

- 17. Paragraphs 1 16 are re-alleged and fully incorporated as if set forth herein.
- 18. On or about June 5, 2008, Edward Hooper ("Hooper") retained Defendant to represent his grandson, David Brooks ("Brooks"), concerning a traffic citation Brooks received in Gaston County.
  - 19. Hooper paid Defendant \$149.00 for the representation.
  - 20. Brooks' court date for his traffic citation was set for June 27, 2008.
- 21. No attorney appeared on Brooks' behalf at his June 27, 2008 court date, and the court entered a Failure to Appear against Brooks.
- 22. Due to Defendant's failure to appear at his client's June 27, 2008 court date, the North Carolina Division of Motor Vehicles ("NCDMV") notified Brooks that his driving privilege would be suspended indefinitely.
- 23. On or about August 2, 2008, Hooper contacted Defendant by e-mail concerning the NCDMV notice and the impending suspension of Brooks' driving privilege.
- 24. Defendant did not respond to either Hooper or Brooks regarding Hooper's August 2, 2008 e-mail.
- 25. On or about August 5, 2008, Hooper again emailed Defendant concerning the NCDMV notice received by Brooks.
- 26. Defendant did not respond to either Hooper or Brooks regarding Hooper's August 5, 2008 e-mail.
- 27. On or about August 14, 2008, Hooper and Brooks attended court in Gaston County and had the citation dismissed without the assistance of an attorney.
- 28. On or about August 25, 2008, Defendant notified Hooper that he had disposed of Brooks' case.
  - 29. Defendant never appeared in court on Brooks' behalf.
  - 30. Defendant did not actually participate in resolving Brooks' citation.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

a) By failing to appear on behalf of Brooks, Defendant failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;

- b) By failing to respond to Hooper's e-mails, Defendant failed to keep his client reasonably informed about the status of the matter and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(3) and (4); and
- c) By claiming to have resolved Brooks' traffic citation when he had not, Defendant made a false communication about his services in violation of Rule 7.1(a).

## WHEREFORE, the Plaintiff prays that:

- (1) Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. § 84-28(a) and § .0114 of the Discipline and Disability Rules of the North Carolina State Bar (27 N.C.A.C. 1B § .0114), as the evidence on hearing may warrant;
- (2) Defendant be taxed with the costs permitted by law in connection with this proceeding; and
- (3) For such other and further relief as is appropriate.

This the  $23\sqrt{3}$  day of October, 2009.

James R. Fox, Chair

Grievance Committee

Brian P.D. Oten

Deputy Counsel

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